UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

J.D. CONSULTING, LLC, D/B/A/ DONALDSON TRADITIONAL INTERIORS	)	
Employer	)	
and	)	Case Nos. 29-RC-10336
LOCAL 1, NEW YORK, INTERNATIONAL UNION OF BRICKLAYERS AND ALLIED CRAFTWORKERS, AFL-CIO	)	
Petitioner	)	
and	)	
OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION, LOCAL 530, AFL-CIO	)	
Intervenor	)	
J. ROSEN PLASTERING, INC.	)	
Employer	)	
and	)	Case No. 29-RC-10345
LOCAL 1, NEW YORK, INTERNATIONAL UNION OF BRICKLAYERS AND ALLIED CRAFTWORKERS, AFL-CIO	)	
Petitioner	)	
and	)	
OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION, LOCAL 530, AFL-CIO	)	
Intervenor	)	

COOPER PLASTERING CORP. Employer	)	
and	)	
LOCAL 1, NEW YORK, INTERNATIONAL UNION OF BRICKLAYERS AND ALLIED CRAFTWORKERS, AFL-CIO Petitioner	)	29-RC-10379 (formerly 22-RC-12590)
and	)	
OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION, LOCAL 530, AFL-CIO Intervenor	)	

REGIONAL DIRECTOR'S SUPPLEMENTAL DECISION AND DIRECTION OF ELECTION

On various dates in March, 2005, Local 1, New York, International Union of Bricklayers and Allied Craftworkers, AFL-CIO ("Petitioner") filed petitions with the National Labor Relations Board, herein called the Board, under Section 9(c) of the National Labor Relations Act, herein called the Act, seeking to represent three separate bargaining units, consisting of all full-time and regular part-time plasterers employed by J.D. Consulting, LLC, d/b/a/ Donaldson Traditional Interiors ("Donaldson"), J. Rosen Plastering, Inc. ("Rosen") and Cooper Plastering Corp. ("Cooper"), but excluding all other employees, office clerical employees and supervisors as defined in the Act.

Donaldson, Rosen and Cooper, which perform plastering work for other firms engaged in the construction industry, are members of the Plastering and Spray

Fireproofing Contractors of Greater New York, Inc. ("Association"). The Association represents 13 employer-members in collective bargaining negotiations with Operative Plasterers and Cement Masons International Association, Local 530, AFL-CIO ("Intervenor"; "Local 530"). The Intervenor intervened in these proceedings on the basis of its collective bargaining agreement with the Association, effective from July 1, 2002, through January 31, 2006, encompassing the petitioned-for unit. A successor collective bargaining agreement was executed by the parties on July 1, 2005, effective until January 31, 2009.

On May 9 and 27, 2005, a hearing was conducted before a Hearing Officer of the Board. On July 6, 2005, the undersigned issued a Decision and Direction of Election in the three separate petitioned-for units. On July 27, 2005, the Intervenor, the Association, Donaldson, Rosen and Cooper filed Requests for Review, which were granted. On July 29, 2005, an election was conducted in the three separate petitioned-for units, and the ballots were impounded pending the Board's decision on the Requests for Review.

On November 30, 2005, the Board issued a decision finding, *inter alia*, that the three separate petitioned-for units were not appropriate and that the only appropriate unit is a multiemployer, Association-wide unit.

On December 6, 2005, the Petitioner indicated that it remains willing to proceed to an election in the multiemployer unit found appropriate by the Board. Pursuant to an administrative investigation, the Petitioner has a sufficient showing of interest to proceed to an election in the larger multiemployer unit encompassed by the relevant collective bargaining agreement.

On January 12, 2006, a supplemental hearing was held before a Hearing Officer of the Board. Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me.

The Intervenor and the Association are now contending, for the first time, that the bargaining unit should extend beyond the geographical area covered by the current collective bargaining agreement, which encompasses 19 counties in New York and three counties in Connecticut. According to the Intervenor and the Association, a bargaining unit that includes employees in the remaining counties of Connecticut, as well as employees in New Jersey, Pennsylvania, throughout New England,[1] and any other location where the employer-members of the Association may conduct business,[2] is the only appropriate bargaining unit herein.

The Petitioner takes the position that the multiemployer bargaining unit should be coextensive with the unit set forth in the current collective bargaining agreement, since the bargaining relationship between the Association and the Intervenor was the basis for the Board's finding that the multiemployer unit is appropriate. However, the Intervenor and Association argue that the Petitioner's attempt to limit the geographical scope of the collective bargaining unit is tantamount to a *de facto* amendment of the petitions, and that the date of the "amendment" should be considered the filing date for contract bar

[1]Barrasso's testimony regarding the New England states omitted the state of New Hampshire, and it is not clear from the record whether Association members perform work in that state.

[2] Under cross examination, Barrasso was asked hypothetical questions about employees in Virginia, California, and Washington State, who, if they exist, would be included in the unit proposed by the Association and the Intervenor. Barrasso did not know whether or not Association members perform work on the West Coast, and it is not clear from his testimony whether he believes that Association members perform work in Virginia.

purposes.[3] Accordingly, the Intervenor and the Association assert that the "amended" petitions are barred by the July 1, 2005, collective bargaining agreement. Further, the Intervenor and the Association argue that the Region should dismiss the petitions because the "amended" petitions are for a bargaining unit that is fundamentally different in size and character from the single-employer units sought in the original petitions.

With regard to the composition of the bargaining unit, the parties agreed that a unit confined to plasterers is appropriate. However, there was some record testimony regarding the work performed by lathers, and by factory workers who fabricate panels, and there appears to be some dispute as to whether these individuals should be included in the bargaining unit.

I have considered the evidence and the arguments presented by the parties. As discussed below, I have concluded that the Board's decision, and the Petitioner's position regarding the geographical scope of the unit, did not result in the *de facto* amendment of the petitions herein. Further, I have concluded that the multiemployer bargaining unit set forth in the current collective bargaining agreement between the Intervenor and the Association, and now sought by the Petitioner, is an appropriate unit. That is the only issue that need be addressed with respect to unit scope. Although the bargaining unit proposed by the Association and the Intervenor, which would include all plasterers employed by the 13 Association members in the states of New Jersey, Pennsylvania, New York, throughout New England, and any other location where the 13 companies may do business, may be appropriate, I need not resolve that question here. Accordingly, I have directed an election in the contractual bargaining unit, which includes employees in 19

[3] The Association argues that there were two *de facto* amendments, with the first *de facto* amendment occurring when the Board held the multiemployer bargaining unit to be the only appropriate unit.

New York counties and three Connecticut counties, and does not include lathers, fabricators of panels, or employees in other locations. The facts and reasoning that support my conclusions are set forth below.

The Hearing

Witnesses

The Petitioner, the Intervenor, and the Association were represented at the hearing, but the only witness to testify at the hearing was Carmen Barrasso, on behalf of the Intervenor. Barrasso is the vice president of the Operative Plasterers and Cement Masons International Association ("OPCMIA"), as well as a fund administrator for the Intervenor's health, welfare and pension funds, and a former International trustee of the Intervenor. Barrasso has not personally visited the Association members' job sites located in New Jersey, Pennsylvania, or New England, but he claimed to know about work performed in these various geographical areas through his "network," which includes employee-members of the Intervenor and employer-members of the Association. Thus, all of Barrasso's testimony regarding work performed in geographical areas other than those set forth in the contract is hearsay.

Documents Provided

At the outset of the hearing, and again at the conclusion of Barrasso's testimony, the Hearing Officer directed the Association to provide witnesses and documentary evidence regarding each employer-member that is performing work outside the geographical area set forth in the collective bargaining agreement. Specifically, the Hearing Officer asked for books and records for the past two years, such as payroll records and shop steward reports, reflecting the names, hours worked, and number of

employees working outside the contractual geographical area. None of this evidence was provided.[4]

Barrasso testified that the Intervenor's funds remittance reports would show the locations of the projects on which employees worked. However, the remittance reports were not provided at the hearing. Instead, the Intervenor supplied a document that was *based* on the remittance reports, but that does *not* reflect the locations of the projects where employees worked. Rather, the document sets forth, *inter alia*, the names of the employees who are members of the Intervenor, the employers/Association members for which they work, and the total days each employee worked in July and October, 2005, for each employer-member of the Association. Barrasso did not identify any employees on the list who worked outside the geographical area set forth in the current collective bargaining agreement.

Further, the list contains many duplications. For example, it reflects that Donaldson's 18 employees include two James Herons, two M. Maleks, two James Nelsons, two Brendan Spillanes, one Anthony Miller, and one A. Miller. In addition, four Donaldson employees (Miguel Contreras, Anthony Miller, Mario Perez and Sean Sullivan) have duplicate listings as a result of performing work for other members of the Association (Island Diversified, Island Lathing & Plastering, Island International, and Rosen, respectively). Nonetheless, for the purpose of tallying the total number of employees employed by the Association's members, each duplication is treated as an additional employee, both in the document itself and in the supplemental briefs of the Association (at page 3) and the Intervenor (at page 16).

[4] In addition, the Intervenor did not provide documents pertaining to the contract negotiations in 2005, requested by the Petitioner.

In addition, the Intervenor introduced into evidence a list of "Completed Spray Fireproofing and Plastering Jobs in Connecticut," supplied by Island International Industries, Inc., one of the 13 members of the Association. The list includes projects both within and outside the geographical jurisdictional area set forth in the current collective bargaining agreement. The document does not reveal the dates that the jobs were performed, the names of the employees who performed the jobs, whether the employees were members of the Intervenor, or whether the work was covered by the Local 530 contract. The list does not include any projects that are currently being performed, but only projects that have been completed.

The Intervenor also offered into evidence the following letter regarding the use of "Plasterers" in the future, from the project manager of Morell-Brown Corp., another member of the Association, to Carmen Barrasso, dated January 11, 2006:

> RE: New Jersey Projects
>
> Dear Carmon [sic]
>
> The following are projects we are working on or have under contract. Please be advised that we will be actively pursuing work in this area and will use Plasterers to spray our jobs.
>
> | | |
> |---|---|
> | Lefcourt Square | Underway |
> | Bloomingdale's | Under Contract |
>
> If you have any further questions please contact the undersigned.

The letter does not reveal whether "Plasterers" means members of Local 530. Although the letter indicates that "Plasterers" will be performing work for Morrell-Brown in New Jersey in the future, it does not disclose whether they are doing so at present, or whether they have done so in the past.

Additional documents provided by the Intervenor included the current collective bargaining agreement, and a list of the Association's 13 members, which list has not changed since the initial proceeding in May, 2005.

FILING DATE OF THE PETITION

If a petitioner does not amend its petition to enlarge the petitioned-for bargaining unit, but the Board finds the appropriate unit to be broader than that petitioned for, the original filing date remains unchanged. It is only if a Petitioner amends its petition to seek a unit that is substantially larger and different in character from the petitioned-for unit, that the amended petition is treated as a new petition filed on the date of the amendment. *Brown Transport Corp*., 296 NLRB 1213, 1214, 1215 (1989); *see Casale Industries*, 311 NLRB 951, 953 (1993).

Thus, the existing case law does not support the argument that the petitions were amended when the Board issued its decision, finding a multiemployer unit appropriate, or when the Petitioner sought to limit the unit's geographical scope to the 19 New York counties and three Connecticut counties, as set forth in the most recent collective bargaining agreement. Moreover, in the initial hearing in this matter, no party took the position that the appropriate unit must be broader than that set forth in the contract, or revealed that Association members perform work in New Jersey, Pennsylvania, Connecticut, or elsewhere in New England. Thus, it is the Intervenor and the Association that are now seeking to expand the bargaining unit to one encompassing more than half a dozen states, spanning thousands of square miles of territory.

Pursuant to *Brown Transport Corp*., 296 NLRB 1213 (1989) and *Casale Industries*, 311 NLRB 951, 953 (1993), I find that the petition herein was not amended as

contended by the Association and the Intervenor. Accordingly, I find that the original filing date remains unchanged, and it is unnecessary to reach the issue of whether the "amended" bargaining unit is larger or different in character from those petitioned for.

COMPOSITION OF THE BARGAINING UNIT

The parties agreed that a bargaining unit composed solely of plasterers would be appropriate. The unit set forth in the collective bargaining agreement does not include lathers, or fabricators of panels, and Barrasso testified that lathing work is "another trade." With regard to panelization work, Barrasso indicated that one company, Island International, operates a factory "where they make these panels, all right, that are fabricated in the shop environment, all right? And what they do is, they put it—they have pieces delivered from shops that manufactures [sic] metal parts and when they come to their shop, they put those metal parts together, either bolt or weld them together and then they put the different materials on that…" However, Barrasso did not specify whether the workers who "put those metal parts together" are the same workers who "put the different materials on that." It appears from the record that these tasks involve completely different skills, and that the individuals who bolt or weld the metal parts together are not plasterers. Accordingly, I will exclude lathers and fabricators of panels from the bargaining unit.

GEOGRAPHICAL SCOPE OF THE BARGAINING UNIT

Section 9(b) of the Act provides (with certain exceptions not relevant to the instant case), that the Board "shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft

unit, plant unit, or subdivision thereof." Thus, "the text of the Act reflects that Congress has not authorized the Board to direct elections in units encompassing the employees of more than one employer." *Oakwood Care Center*, 343 NRLB No. 76, slip op. at 5 (2004). However, "[i]n cases where all parties voluntarily agree to bargain on a multiemployer basis, the Supreme Court has recognized that 'Congress intended that the Board should continue its established administrative practice of certifying multiemployer units.'" *Oakwood Care Center*, 343 NRLB No. 76, slip op. at 5 (quoting *NLRB v. Truck Drivers Local 449 (Buffalo Linen Supply Co.*), 353 U.S. 87, 96 (1957)). Although a history of bargaining on a multiemployer basis is the primary factor in determining whether such a unit is appropriate, a multiemployer unit may not be appropriate if its members are geographically dispersed, or if its members are engaged in a broad range of unrelated businesses. *Maramount Corp. et al.*, 310 NLRB 508, 511 (1993).

In the instant case, since the Board has determined that the multiemployer bargaining unit is the only appropriate unit, the only issue that remains is whether the Intervenor and Employer are correct in arguing that the multiemployer unit should include employees who are not covered by the current collective bargaining agreement, but who are employed by the 13 Association members in New Jersey, Pennsylvania, throughout New England, and any other state or region where Association members might be doing business. A number of these employees are unrepresented.

It is well settled that an "established multiemployer or multiplant bargaining pattern as to certain categories of employees is not controlling with respect to other categories of employees as to whom there is no bargaining history, and separate, single employer or single plant units of the unrepresented employees are presumptively

appropriate." *Piggly Wiggly California Company*, 144 NLRB 708, 710 (1963)(citing *Joseph E. Seagram & Sons, Inc*., 101 NLRB 101 (1952)). A "history of multiemployer bargaining for other employees does not establish a multiemployer unit as the only appropriate unit for previously unrepresented employees in a different category." *Popular Price Dress Manufacturers Group*, 126 NLRB 966, 967 (1960); *Macy's San Francisco and Seligman & Latz, Inc*., 120 NLRB 69, 71 (1958). An established bargaining history on a multiemployer basis will only "determine the scope required for a unit of previously unrepresented employees if those employees are in excluded fringe classifications which otherwise lack homogeneity, cohesiveness, or separate identity, and are merely residual to the main body of employees in the established unit." *St. Luke's Hospital*, 234 NLRB 130, 130-131 (1978). As discussed further below, the record does not establish that Association members' employees in New England and other far-flung locations lack an identity separate from that of the employees in the contractual bargaining unit. .

Moreover, with regard to employers operating in multiple locations, "[i]t is well established that, when considering a multi-facility location, a single-facility unit is presumptively appropriate for collective bargaining. This presumption can be overcome by showing a functional integration so substantial as to negate the separate identity of the single-facility unit." *Globe Furniture Rentals, Inc.*, 298 NLRB 288 (1990). In addition to the functional integration of operations, the Board's analysis of unit issues pertaining to multilocation employers examines the geographical relationship among the facilities involved; the degree of employee interchange; the similarity of employee skills, functions, working conditions, and benefits; shared supervision; the extent of local

autonomy, balanced against the extent of centralized control over daily operations, personnel and labor relations; bargaining history, if any exists; and the extent of organization. *See, e.g., Novato Disposal Services, Inc*., 328 NLRB No. 118 (1999); *R & D Trucking*, 327 NLRB 531 (1999); *Passavant Retirement and Health Center*, 313 NLRB 1216 (1994); *Globe Furniture Rentals, Inc*., 298 NLRB 288 (1990); *Twenty-First Century Restaurant of Nostrand Avenue, Licensee of McDonald's Corporation*, 192 NLRB 881 (1971); *Davis Cafeteria*, 160 NLRB 1141 (1966); *Sav-On Drugs, Inc.*, 138 NLRB 1033 (1962); *Barber-Colman Company*, 130 NLRB 478 (1961).

An analysis of these various factors fails to establish that the only appropriate bargaining unit would have to include Association members' employees in New Jersey, Pennsylvania, and throughout New England, who are not part of the bargaining unit set forth in the current collective bargaining agreement. Nor does the evidence demonstrate that employees in locations outside the contractual bargaining unit lack an identity separate from that of employees who are covered by the collective bargaining agreement. It cannot be over-emphasized that the contractual unit set forth in the most recent collective bargaining agreement (executed well after the filing of the petitions herein), does not include employees in geographical areas other than 19 counties in New York, and three counties in Connecticut.

Geographical Relationship Among the Facilities Involved

Barrasso maintained that over the past two years, Association members have performed work in a number of Connecticut counties that are not part of the current contractual bargaining unit, as well as in the Philadelphia area, New Jersey, and "all of New England." Barrasso did not specifically testify regarding the distances among these

various facilities and work sites, or between these locations and the locations covered by the collective bargaining agreement. However, it is clear that, in many cases, they are considerable distances from any of the locations covered by the most recent collective bargaining agreement.

Bargaining History

At the initial hearing in May, 2005, Barrasso testified that Michael Patti, president of the Association, told him in 2002, "[W]e recognize you as the exclusive representative for plasterers in the New York area." The July 1, 2002, collective bargaining agreement between the Association and the Intervenor is only applicable to work performed in 19 counties in New York State, set forth in Article II, Section 1:

> This Trade Agreement is effective on all jobs within the geographic territory of the following counties in New York: Brooklyn; Queens; Staten Island; Bronx; Manhattan; Nassau; Suffolk; Westchester; Putnam; Rockland; Orange; Dutchess; Columbia; Ulster; Greene; Delaware; Albany; Sullivan and Renssellaer. This Trade Agreement shall also cover all jobs performed on Rikers Island; Ellis Island; Liberty Island; Ward Island; and Roosevelt Island.

Identical language appears in Article II, Section 1 of the new, July 1, 2005, collective bargaining agreement, except that it also includes three counties in Connecticut: Fairfield, Litchfield and New Haven. At the time the July 1, 2005, contract was negotiated, Barrasso was aware that some Association members were working outside the geographical area set forth in the collective bargaining agreement, but the Intervenor and the Association did not amend the collective bargaining agreement to include other locations.

Extent of Organization

According to Barrasso, the employees performing bargaining unit work in New Jersey, Pennsylvania, and throughout New England include members of Local 530,

members of other unions, -and non-union employees. Prior to the contract negotiations in 2005, when Barrasso showed Local 530 members' union authorization cards to the president of the Association, they did not include any cards signed by employees in New Jersey, Pennsylvania, or New England, nor has the Petitioner organized employees of the 13 Association members in these locations.

Employee Interchange

There is some record evidence regarding interchange among employees of different companies,[5] but only very scant evidence regarding interchange among employees working in different states and regions. Although Barrasso testified that Association members' "core employees" perform work at locations outside the geographical area set forth in the collective bargaining agreement, he did not indicate how often this occurs or define what he meant by "core employees." When asked a specific question under cross-examination, regarding employees of Island Lathing and Plastering, Inc., he testified as follows:

> Q: Okay, and do you know for the people that you listed here, under Exhibit 9 [referring to the list of all employees who are members of the Intervenor], do you know how many work in the shop?
>
> A: No, I do not, without even looking I couldn't pin it down, no, and you know, it could be a combination of all of them, all of them may go in the shop and then they may work in the field, they may work in New Jersey, they may work in New York, they may work in Massachusetts, I don't know, it's tough to keep track, you know."

As noted earlier, Barrasso's testimony regarding work performed at locations other than those set forth in the collective bargaining agreement is strictly hearsay.

[5] For example, the Intervenor's list of members indicates that several employees of Donaldson and Rosen also work for Island Diversified, Inc., Island Lathing & Plastering, Inc. and Island International Industries. In addition, there are employees of Morrell Brown Corp. who also work for C & D Fireproofing & Plastering Corp. and Island Lathing & Plastering, Inc.

Similarity of Employee Skills and Functions

Barrasso testified that Donaldson, Cooper and Rosen perform traditional plastering work, as well as some spray fireproofing, cover coat work and "patchwork in general." Other members of the Association have "other concentrations of specialties" that overlap with those engaged in by Donaldson. However, Barrasso did not indicate whether or not there is any difference between the work performed by employees in the contractual bargaining unit, and the work performed in geographical areas outside the contractual bargaining unit.

Working Conditions and Benefits

Barrasso contended that the Local 530 contract is applied whenever Association members perform work outside the contractual geographical area. However, the contract by its terms does not provide for that, and the record is devoid of documentary evidence to support this contention.

Functional Integration of Operations

No evidence was provided regarding the functional integration of operations among the various locations where Association members operate.

Shared Supervision

There is no record evidence regarding common supervision of employees working in different states or regions.

Extent of Local Autonomy

There is no record evidence regarding the extent of local autonomy at individual work sites and facilities in the various states where Association members do business.

Degree of Centralized Control over Daily Operations, Personnel and Labor Relations

There is no record evidence regarding this factor.

In sum, the unit proposed by the Intervenor and the Association is geographically dispersed across six or nine states (depending on whether "all of New England" includes New Hampshire, Vermont and Maine). There is no bargaining history outside the contractual bargaining unit, consisting of employees in 19 New York counties and three Connecticut counties. The Petitioner has not organized employees outside of the contractual bargaining unit, and only a portion of these employees are members of the Intervenor. The record evidence regarding interchange, supervision, working conditions, and other traditional community of interest factors is incomplete. Thus, the record evidence does not establish that employees in Pennsylvania, New Jersey, other Connecticut counties, or the rest of New England, lack an identity separate from that of the contractual bargaining unit, or that a bargaining unit inclusive of these non-contractual bargaining unit employees is the only appropriate unit.

Moreover, the Association and Intervenor have not cited any cases in which the Board found a multiemployer, multilocation bargaining unit spanning at least half a dozen states to be the only appropriate unit.[6]

[6] *Premier Plastering, Inc*., 342 NLRB No. 111, slip op. (September 16, 2004), relied on by the Intervenor, is inapposite, inasmuch as the unit found appropriate there was a single-employer unit, contained within the borders of just one state (Ohio). In *Premier Plastering*, the longstanding geographical jurisdictions of the two competing unions were an irrational "patchwork quilt of county-based units," *Premier Plastering, Inc*., 342 NLRB No. 111, slip op. at 1, a factor not developed in the instant case. A further factor is that the employer in *Premier Plastering* used "a core group of employees to work at its various worksites regardless of job location," requiring that the bargaining unit be "one without geographic limitation." *Premier Plastering, Inc*., 342 NLRB No. 111, slip op. at 2. In the instant case, although Barrasso testified in conclusory fashion that the 13 Association members use "core employees" at various locations, he did not reveal the source of his knowledge, or identify such "core employees" or provide any specific facts. Documents such as payroll records and shop steward reports, requested by the Hearing Officer, were not provided, nor did the Intervenor provide remittance reports setting forth the job locations at which employees worked.

Accordingly, I will direct an election in the bargaining unit set forth in the most recent collective bargaining agreement between the Intervenor and the Association.

CONCLUSIONS AND FINDINGS

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.

2. At the initial hearing in this matter, the parties stipulated that J.D. Consulting, LLC, d/b/a/ Donaldson Traditional Interiors, J. Rosen Plastering, Inc., and Cooper Plastering Corp., are engaged in the performance of plastering work for various firms engaged in the construction industry. During the past year, which period is representative of their annual operations generally, each of these companies individually, in the course and conduct of its business operations, purchased and received at its job sites located in the State of New York, building materials and supplies valued in excess of $50,000 directly from various suppliers located outside the State of New York. Based upon the stipulations of the parties, and the record as a whole, I found that Donaldson, Rosen and Cooper are engaged in commerce within the meaning of the Act, and it would effectuate the purposes of the Act to assert jurisdiction over them.

Although the Board has found the petitioned-for single-employer bargaining units to be inappropriate, all members of a multiemployer group who participate in, or are bound by, multiemployer bargaining negotiations are considered as a single employer for jurisdictional purposes. *Insulation Contractors of Southern California*, 110 NLRB 638 (1955). Jurisdiction is asserted if the standards are satisfied by any member of the association, *Laundry Owners Assn. of Greater Cincinnati*, 123 NLRB 543 (1959), or by a total of the business of association members collectively

without regard to that of the individual members. *Federal Stores*, 91 NLRB 647 (1950); *Checker Cab Co.*, 141 NLRB 583 (1963); *Transportation Promotions*, 173 NLRB 828 (1969).

Based upon the stipulations of the parties, and the record as a whole, I find that J.D. Consulting, LLC, d/b/a/ Donaldson Traditional Interiors, J. Rosen Plastering, Inc., Cooper Plastering Corp., C & D Fireproofing & Plastering Corp., Vincent Colletti & Co., Inc., Morell-Brown Corp., Lawrence B. Wohl, Inc., Island Diversified, Inc., Island Lathing & Plastering, Inc., Island International Industries, Patti Fireproofing Corp., Patti & Sons, and JDC Covercoat Corp., are engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The Petitioner and Intervenor are labor organizations within the meaning of Section 2(5) of the Act. The labor organizations involved herein claim to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employers within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time plasterers employed by J.D. Consulting, LLC, d/b/a/ Donaldson Traditional Interiors, J. Rosen Plastering, Inc., Cooper Plastering Corp., C & D Fireproofing & Plastering Corp., Vincent Colletti & Co., Inc., Morell-Brown Corp., Lawrence B. Wohl, Inc., Island Diversified, Inc., Island Lathing & Plastering, Inc., Island International Industries, Patti Fireproofing Corp., Patti & Sons, and JDC Covercoat Corp., at their facilities and job sites located in Fairfield, Litchfield and New Haven, in the State of Connecticut, and in Brooklyn, Queens, Staten Island, Bronx, Manhattan, Nassau,

Suffolk, Westchester, Putnam, Rockland, Orange, Dutchess, Columbia, Ulster, Greene, Delaware, Albany, Sullivan, Renssellaer, Rikers Island, Ellis Island, Liberty Island, Ward Island, and Roosevelt Island, in the State of New York, EXCLUDING all tapers and pointers in the City of New York, office clerical employees, lathers, fabricators of panels, all other employees, and supervisors as defined in the Act. [7]

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notices of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible

[7] The principal addresses of the employers are as follows:

Name of Employer	Address
C & D Fireproofing and Plastering Corp.	48 Walnut Street New Rochelle, NY 10801
Vincent Colletti & Co., Inc.	629 Old White Plains Rd. Tarrytown, NY 10591
Donaldson Traditional Interiors	91 Green Street Huntington, NY 11743
Morell-Brown Fireproofing Corp.	722 East 140th Street Bronx, NY 10454
Lawrence B. Wohl, Inc.	49 Beech Street Port Chester, NY 10573
J. Rosen Plastering, Inc.	1462 Schenectady Avenue Brooklyn, NY 11203
Cooper Plastering, Inc.	98 Pierson Avenue Edison, NJ 08837
Island Diversified, Inc. Island Lathing & Plastering, Inc. Island International Industries	4062 Grumman Blvd. Calverton, New York 11933
Patti Fireproofing Corp. Patti & Sons	8 Berry Street Brooklyn, New York. 11211
JDC Covercoat Corp.	261 Chelsea Street Staten Island, NY 10307

to vote are employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are (a) employees in the unit who were employed for at least 30 days in the 12-month period preceding the eligibility date for the election, and (b) employees in the unit who had some employment during that 12-month period and were employed for at least 45 days within the 24 months immediately preceding the eligibility date for the election. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States who are employed in the unit may vote if they appear in person at the polls.

Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.

Those eligible to vote shall vote whether they desire to be represented for collective bargaining purposes by Local 1, New York, International Union of Bricklayers and Allied Craftworkers, AFL-CIO, by Operative Plasterers and Cement Masons International Association, Local 530, AFL-CIO or by neither labor organization.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, four (4) copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB No. 50 (1994). In order to be timely filed, such list must be received in the Regional Office, One MetroTech Center North-10th Floor, Brooklyn, New York 11201 on or before **February 14, 2006**. No extension of time to file the list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notices of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. The Employer shall be deemed to have received copies

of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB No. 52 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the elections whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **February 21, 2006.** The request may be filed by electronic transmission through the Board's web site at NLRB.Gov but **not** by facsimile.

Dated: February 7, 2006, Brooklyn, New York.

ALVIN BLYER

_____

Alvin P. Blyer
Regional Director, Region 29
National Labor Relations Board
One MetroTech Center North, 10th Floor
Brooklyn, New York 11201

Errata

Page / line	Transcript Version	Corrected Version
208	Exhibits: None	Board Exhibit 3 and Intervenor's Exhibits 7 through 11 were admitted
212 / 9, 11	multiemployee	multiemployer
222 / 21	multi-employed	multiemployer
229 / 14	Farmer's Union	(?)
235 / 13	levels	locals
251 / 4	Daniel John Smith	Carmen Barrasso
252 / 14	toll	all
265 / 16	employers	employees
270 / 14	employees	employers
280 / 4, 7	calm collective bargaining agreement	current collective bargaining agreement (?)
304 / 17	cause	cards
339 / 14	of	or
344 / 18	stopped	estopped
345 / 9	Juris Prudence	jurisprudence